

# BEST AVAILABLE COPY

Claim 32: Kindly amend as follows, a marked-up copy is attached hereto:

- 32 - (amended)

*(Signature)* Use of Claim 30 wherein the antigen or hapten comprises at least one of sequences SEQ ID No 3 through SEQ ID No 136.

## REMARKS

Responsive to the Office Action, a Restriction Requirement, dated October 26, 2001, the applicants elect, with traverse, to prosecute the invention of Group "a", and more specifically an antigen. The present application is a National stage application of PCT/FR 98/03814 filed under 35 U.S.C. § 371. Therefore, PCT Rule 13 regarding "Unity of Invention" applies, as indicated by the Examiner.

The applicants note that the PCT Examiner raised an objection for lack of Unity. The PCT Examiner considered pending claim 40 (Method of preparing a protein by recombination process...) to be directed to a second species which is different from the first species of the generic invention. Claims 22 to 39 were considered to form a single general inventive concept under PCT Rule 13.1. Consequently, the applicants traverse the instant Restriction Requirement as inconsistent with the handling of the Application before international authorities.

Under PCT Rule 13. 2, "the requirement of unity of invention... shall be fulfilled only where there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression 'technical features' shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art."

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The applicants respectfully submit that claims 22 to 39 satisfy the unity of invention requirement under PCT Rule 13.2. As noted previously, this submission is born out by preliminary examination in the PCT international phase.

Claims 22 to 39 are directed to the use of enterobacterium membrane protein fragment for the preparation of a pharmaceutical composition useful for improving immunity intended to be administered nasally. Thus, claims 22 to 39 involve the same special technical feature. Specifically, the common technical feature of claims 22 to 39 is drawn to the nasal use of an enterobacterium membrane protein fragment for improving immunity against an immunogen (antigen or hapten).

Accordingly, and in accord with PCT Rule 13, the applicants traverse the restriction requirement, respectfully request reconsideration of this restriction requirement, and request simultaneous examination of the full scope of the claimed invention encompassed in claims 22 to 39.

The applicants' assertion of the Unity of the claimed invention is all the more urgent in view of the Festo decision. Election of such a limited invention will necessarily greatly reduce the scope of the claimed invention and put any resulting US patent in contrast to other patents issuing world wide based on the same PCT international application.

Swift and favorable consideration of the instant application is respectfully solicited.

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Respectfully submitted,

THE FIRM OF HUESCHEN AND SAGE

By:



G. PATRICK SAGE

Dated: November 26, 2001

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Enclosure: Postal Card Receipt, and

Response to Notice to Comply with Requirements for Applications  
Containing Nucleotide Sequence, including Computer Readable and  
Paper forms.

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**MARKED-UP CLAIMS**

- 25 - (amended)

Use of Claim 22 wherein at least one fragment has the sequence SEQ ID No 2 [ 1 ].

- 32 - (amended)

Use of Claim 30 wherein the antigen or hapten comprises at least one of sequences SEQ ID No 3 [ 2 ] through SEQ ID No 136 [ 74 ].